1:Wilson E-5 (1936-1938)1951 FN17 Ngonde FN17
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decided by the old village headmen and chief in consultation, at the commencement of the 'coming out' ceremony. This moving aside of the old men is an essential part of the ceremony and occurs even when there is unoccupied land available. For example, at the 'coming out' of Mwatkuga, Mwaipopo's heir, the old men moved aside to make room for their sons, although there is a large area of unoccupied land in the chiefdom, which is slowly being colonized by Mwaipopo's men.

Although the main redistribution is at the 'coming out', later readjustments are common enough. If a particular man's village attracts many members, and these members become wealthy in wives and children, then it may be necessary for the old men to move aside a second time, to make yet more room for their sons. The senior headman of the side of the chiefdom concerned, in consultation with the chief and other village headmen, has the power to make equitable adjustments in the land holdings of the villages of his side. We watched one village, whose numbers had diminished, being moved to make more room for a junior one which had flourished. But so long as its members remain together, a village retains its name and identity, though its site may be moved more than once. 'A village', the Nyakyusa say, 'consists in men, not in land.'

Boundary disputes between villages of a chiefdom are not unusual. In the old days these often led to war. Nowadays they are taken before the Court, whence there is an appeal to the federal court, the District Officer, the Provincial Commissioner and thence to the High Court (cf. p. 137). One such case, which we observed, had dragged on for years because the chief concerned, who happened to be president of the Court, feared to give judgment lest he be bewitched by the village which lost the case (cf. Document p. 191).

The division of the land allotted to each village lies with the members of that village, under the leadership of their own headman. The village headman himself, and other prominent individuals in the group, get first choice of sites: a son does not have a prescriptive right to the building site and gardens of his father when the old men move aside for their sons. 'If you are prominent, and you like your father's old site, that's all right, the others agree; but if you are unimportant ("light"), no; one of the important men takes it; you have no power.' Certain building and garden

1:Wilson E-5 (1934-1938) 1951 FN17 Ngonde FN17
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3. A LAND DISPUTE BETWEEN VILLAGES OF THE SAME CHIEFDOM

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This case was discussed with a great number of informants. We first quote the account written by Mwaisumo (our clerk) which sums up the earlier discussions. 'Mwanzambe and Mwakalembo are quarrelling over the land of Ipoma. Both are village headmen of the older generation of Mwaipopo (the chief). Mwanzambe is the *senior*, Mwakalembo the *junior*. Mwanzambe is *senior* village headman of Mwaipopo. Mwakalembo is the next on his side (see table, pp. 181–2).

'At the "coming out" of Mwaipopo the old men gave Mwanzambe the land of Bujege, and said that his *junior* Mwakalembo should build on the land of Bunikali. He (Mwakalembo) built with Mwakwese, the man of Seba.

'When the "coming out" of Mwankuga, Mwaipopo's son, was held, Mwanzambe sent to his *junior* Mwakalembo, saying: "At *your* place here we are going to build the house of *our* wife Kalinga, that is to say we are going to plant the *ukipondo* tree of *our* child Mwankuga here." Mwakalembo agreed, but in secret he thought to himself: "My *senior* wants to seize *my* village! See he is building the great house at *my* place, and I am a *junior*!" So they brought out Mwankuga with Mwafungo as his *senior* headman, and Mwaseba Kabolile as a *junior*, and they planted the *ukipondo* tree. Mwafungo built with his people and Mwaseba Kabolile with his. Later on Mwanzambe arranged for his "sons", *i.e.* Mwafungo and his fellows, to go to his side, and Mwakalembo thought that his land was saved. He had thought that his *senior* was taking his country, but lo, the latter had moved!

'At that time Mwafungo went to *enter into an inheritance*[1] in MuNgonde (*i.e.* on the Lake-shore plain). On his return he went to the side from which he had come. He sought a bull with which to say: "Fathers, I have arrived." Mwanzambe called his junior Mwakalembo saying: "Our son has arrived, they are eating the meat there without our having discussed together where we should kill, or where we should eat the meat." (*cf.* pp. 171–4.)

'So now Mwanzambe wants to give his child Mwafungo a homestead site in which to build, he wishes to give him one at the *ukipondo* tree where he first established him, and he has told his junior Mwakalembo so. Mwakalembo objected, saying: "How can you give him my homestead? Where shall I go?"

[1] Another reason for the departure of Mwafungo Ol-nzibupwa) is given on p. 230.

1:Wilson E-5 (1934-1938)1951 FN17 Ngonde FN17
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"Mwanaamba said they could both build there together.

"Mwakalembo said "No."

"Mwanaamba said: "How can you refuse? The site is mine, and I am your senior. Do you not see the *ulupundo* tree which I planted for my child Mwafungo?"

"Mwakalembo replied: "Yes, I see it, but you went away and left it, you and your children. I gave thanks thinking my land had escaped capture."

"Mwanaamba said: "And the *ulupundo* tree, do you tell us that it was seized also?"

"Mwakalembo replied: "No, I don't deny the *ulupundo* tree, but when you pray you pray in your homestead, in the house of your wife. If you wish you can plant again at your place."

"Mwanaamba said: "Why do you quarrel with me, Mwakalembo, I, your father, your senior, I who gave you land on which I said your fellow, Mwafungo should also build, since you are both my children?"

"Mwakalembo replied: "The land about which we are quarrelling is mine, it is the place of my blood. I spilt blood, I seized it from Mwaipaja when I fought with him."

(For originally this land about which they are quarrelling was Mwakwese's, it was where Seba's house was built. Then that Mwaipaja of whom they speak was the assistant village headman—a senior man. The followers of Mwakalembo made love to the wives, they approached them when they (the women) went to draw water. Mwaipaja was angry and called out his men to fight with the followers of Mwakalembo. Mwaipaja was defeated, and fled. The followers of Mwakalembo took his homestead. Mwaipaja was driven out: he built at Lupata where Kalonde and his men are now.)

"It is here that Mwanaamba planted the *ulupundo* tree. It is this land that Mwakalembo means when he says that his land escaped seizure by his senior when he went away again with his followers! Mwanaamba says: "See, it is mine also, my father moved Mwaipaja aside, that my junior should build here."

"Mwakalembo says: "I got it by conquest, I spilt my blood."

"People commenting on the case in private say that Mwanaamba is wrong, the country is really Mwakalembo's. Many say that although the case is put off it is not finished, Mwanaamba will be overcome, and so Mwaipopo himself thinks.

"Mwamba Kabwilo and Mwafungo Mwaipopota are those who hold the country now, they are the children of Mwanaamba and Mwakalembo. Mwasengenge, who began speaking (at the trial in court), is the junior ('brother') of Mwanaamba but he holds all the seniority of Mwanaamba because Mwanaamba himself is not in the

1:Wilson E-5 (1934-1938) 1951 FN17 Ngonde FN17
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country, he has moved. The Mwakalembo who is standing there is not Mwakalembo himself, but his son. And the Mwenegenga Mwakaloma who is speaking is a junior, but he speaks because he knows how to speak—he has a "good tongue" (*i.e.* is an orator). And Ngulyo also is a junior—he is speaking because he knows how to speak. All of these are village headmen, senior men, fathers of Mwafungo and Mwaseba Kabelile.'

The case was twice discussed at great length in Lupata Court but no judgement was given. Some maintained that were a judgement given war would result, because the losers would attack. Mwaipopo himself, as president of the court, was said to be afraid to give judgement lest he suffer from 'the breath' or witchcraft of the offended parties. He refused to hear the case a third time and, as Kasitile pointed out, sixteen months after the second hearing Mwaipopo was sleeping in the village of Bujenga (Mwakalembo's village), and it was Mwakalembo and his men who were in possession of the disputed land. Mwaipopo feared the witchcraft (or 'breath') of Mwamambe and his men.

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754 From the Records of the First Class Subordinate Court of Rungwe

•691 *Criminal case*, 11/1935. *Heard* 5/3/35 *before P. M. Higgins.*
L. Roquette, prosecuting.
Rex v. *Musa, son of Hassani.*

Charge: 'By actions and statement representing himself to have power of witchcraft and supplying instruments of witchcraft (green leaves) to one Mwakalobo, son of Mwakalobo.'

Charge read and explained.

Accused pleaded not guilty.

Mwakalobo, headman[1] *of Kapya, a pagan (complainant).*

754 695 'About two months ago a man called Bukowike came to me at Ikapu, stating that he had been sent by the accused to warn me that there was a conspiracy to bewitch me, on the part of one Mwakagiri and Mwakatumbula, because I was supposed to have taken some of the former's country. I told Bukowike to tell the accused to come and tell his own tale. The accused came that same day at about sundown. We entered the house and then he called me outside to talk to me. Prior to doing this he told me that Mwakagiri had given him four cows to arrange my death as the former stated that I was in possession of his land. He said that if I gave him a cow he would take no action. I did so. He also gave me some ground-up green leaves which he instructed me to mix with water and drink. He alleged that this potion would render me immune from witchcraft.

'The accused went off with the cow. Kikomile (X), Kyungalala (Y), and Mahandi (Z) and three of my wives were present during the above conversation.

'About a week later Mwakagiri came to visit me—I had sent for him. I did not welcome him—I told him I had heard that he was after my life. He asked me who had said this and I indicated the accused. He then told me that the accused had made the same statements about me to him. I then came and reported to the D.O. I threw away the medicine that the accused had given me. Relations have recently been strained between Mwakagiri and myself.'

In reply to question by accused: 'Yes, I sent for you but only because you sent Bukowike to me first to warn me.'

First witness, a brother of the complainant, confirmed his story, having been present when both Bukowike and the accused came to the complainant. He added these points:

[1] Probably a minor chief (*umulyakale*), not a village headman (*ulyaswa*). The report of the case was in English.

1:Wilson E-5 (1934-1938) 1951 FN17 Ngonde FN17
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14. SETTLEMENT OF DISPUTES BETWEEN PAGANS AND CHRISTIANS

a. Christian suing a pagan

Tenjulaye (Christian man).

691 683 'Adiele (a Christian elder) and Kujobanabatwa (a pagan) had a dispute. Cattle belonging to Adiele and his fellows ate Kujobanabatwa's crop. Adiele went to drive the cattle out of the field and Kukobanabatwa met him as he was driving them out. Kujobanabatwa swore at Adiele. So Adiele got angry and went to the chief; the chief took the case to Court and Kujobanabatwa was found guilty and ordered to pay 10s. He paid up and the case was finished.'

b. Arbitration between pagan and Christian

627 686 'L. (a Christian preacher) when he was visiting the Nguni[1] in the bush country bought rice from a pagan Nguni, Matuna, and promised to pay him later on. He was a long time in paying his debt so the Nguni went to Ulindula, an elderly Christian living near L., saying: "L. has my shilling. He took my rice." L. agreed that he owed the Nguni a shilling; he said that he had not yet got the money, but would get it very soon. The Nguni went home and after some time, as he was not paid, he came again. Ulindula tried to pacify him. The Nguni said: "If the case defeats you, I shall go to Court." So Ulindula called his fellows Rheuben and Hoseah to pacify the Nguni, and the latter agreed to wait; but still L. did not pay up. So when the missionary visited, the Nguni took the case to him. How it was decided (by the missionary) no one knows.'

c. Pagan suing a Christian

Mwanawa (cited).

691 683 'Mwanawe, a pagan man, has a young son who was once bathing in a stream where Anangiaye, a Christian, came down to bathe also. Anangiaye said to the boy: "Get out, I want to bathe." The boy replied: "See, I was bathing here first", at which Anangiaye got angry and beat the boy.

'Then Mwanawe and his son hastened to Mandekaye's court

[1] There are one or two villages of Nguni immigrants in the strip of unoccupied bush country between Selya and the Lake-shore plain. They mix very little with the Nyakyusa.

1: Wilson E-5 (1934-1938) 1951 FN17 Ngonde FN17
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(*vide supra*) and Mundekesye tried the case with his friends and judged that Anangisye should pay two shillings. Anangisye refused to pay, so Mundekesye took the case to Mwangomo (the chief in whose country the land on which the Christian village Anangisye lived in is situated) and there judgement was given that Anangisye should pay three shillings. Anangisye agreed to do so.'

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5:Wilson E-5 (1934-1938)1938 FN17 Ngonde FN17
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425 622 624 him if it was his idea that the village should die out and leave him, the great-commoner, without men? As he had moved, the great-commoner would have continued, the place was presumably distasteful to him and it had now been allotted to another man. The claim would certainly have been disallowed!"

425 797 427 The examples in this paper have been taken almost entirely from pagan families. For Christians the situation is very much the same except where they live actually on mission land, there they are tenants of the Mission concerned and pay rent to it. And Christians, wherever they live, tend to be more stable in their occupation of land, since they are not forever moving in fear of witchcraft.

7. *CONCLUSION*

178 423 I have striven in this paper to make the individual land-rights possessed by Nyakyusa to-day intelligible to the European reader and to demonstrate to him their determining factors. Of these factors the following are the most important. The Nyakyusa were until recently an isolated and primitive people and so bring with them into the modern world a legal tradition based upon small social groups. This tradition is being inevitably modified both in theory and practice under modern conditions, but not out of all recognition; for they are still a relatively isolated people and the system of indirect rule secures them, in general, against arbitrary legal changes. Within their legal system individuals have, as in any system they must have, certain precisely defined and enforceable rights—among them rights in land.

Many kinds of land, however, are plentiful, though less so than of old owing to the growth of population, the opening of new markets for food and the recent introduction of ploughs. And this cheapness of land is reflected at times in a lack of rigour in the enforcement of rights in it which is unfamiliar to the European observer. Sufficient land for all is a fundamental condition of Nyakyusa society in its present form, which has no place for a landless man.

166 And, finally, the habitual movement of men with their families from one village to another to escape the witchcraft of their neighbours leads to a constant transfer of homesteads and gardens and is the main cause of difficulty in the administration of their laws of property in land and trees. This difficulty is greatest in the case of the newly introduced coffee trees which need continuous tending.

10:Culliver E-5 (1954-1955)1958 FN17 Ngonde FN17
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all. Field boundaries have lost their earlier fluidity, when a plenty of land did not call for precise demarcation, and the only important changes now result from the land being left vacant or by the internal division of established holdings by inheritance or anticipatory inheritance.

In brief, then, the high premium given to land because of its modern scarcity value, and the enhanced authority of the headman in land affairs act together to preserve the individual's rights. The residual rights of the village, as group-owner of all land within the village boundary, do not affect the land-holder during his continued residence there.

The commonest type of dispute in land matters arises in inheritance, where a younger brother sues his senior in order to obtain or increase his share of the paternal holding (see page 21). That is to say, in general only where established holdings are being broken up does dispute arise and then, of course, only between the sons of the dead man. Disputes between neighbours in a village seldom are grave enough to be brought to court or even before the headman.

There are also many petty, semi-domestic cases which faithfully reflect the frequently poor relations between Nyakyusa husbands and wives in modern times.[1]

TABLE IV

NYAKYUSA LAND DISPUTES: CIVIL CASES, 1954

	No. of civil cases	Land cases No.	Land cases %	Population per land case	Density of population
Lake Plains	1,977	104	5	347	283
N.E. Highlands	963	24	2.5	1,342	139
Central Region	992	11	1.1	4,092	247
N.W. Highlands	1,380	8	0.6	7,868	201

Based on returns of civil cases in local courts of first instance (W. Central for 1954. In 1953 the percentages were almost exactly the same as in 1954.

Several interesting points are suggested by these figures. Firstly, there is the larger proportion of land cases and the much smaller population per case in the Lake Plains, where land shortage is worst in relation to local demand, not only because of the higher density of population as such, but also because of the relatively larger acreages required for paddy cultivation. Secondly, in the Central Region of Nyakyusa country there is also a high density of population, but nevertheless only a few land cases; this may be attributed to the absence of cash-cropping and the absence, therefore, of a keen demand for land. On the other hand, the relatively numerous cases, or small population per case, in the north-eastern Highlands seem to result directly from a particularly densely populated area (Ibwekaleki) where coffee cultivation is long established and the demand for land is exceptionally keen. In other words, as far as the figures for 1954 and 1953 show, there is a direct connection between land scarcity and the incidence of land disputes before the local courts (i.e. the more intractable disputes which go beyond the village headmen). General observation supports this conclusion. It may be expected in the future, therefore, that such cases will increase unless administrative action is taken to rationalise the inheritance laws with a view to minimising the area of potential disagreement amongst the sons of a deceased man.

For comparative interest, in so far as they offer some indication, I append here data on other Districts in the Territory where land disputes are common.

1. In 1954, 68 per cent. of all civil cases in the lowest courts were married disputes, including divorce suits, and there was a total of 1,977 civil cases for the year. Of which nearly 5 per cent. were concerned with land.

10:Gulliver E-5 (1954-1955) 1958 FN17 Ngonde FN17
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TABLE V

DISTRICTS IN TANGANYIKA WHERE LAND DISPUTES ARE COMMON

	No. of land cases	% of total civil cases	Estimated population density	Population per land case
1953				
Bukoba District	1,189			
Lushoto Division	240			
Moshi District	327			
Mbeya District	81			

The Changing Village

The possibly unique age-village of the Nyakyusa is now undergoing considerable and fairly rapid change in response to the new conditions of land shortage. There is, firstly, an increasing sense of village exclusiveness and, secondly, there has been a breakdown in the essential age-basis of its organization. That is to say, that whilst the corporate unity of the village as an independent group has been strengthened, yet the social foundation of the village has simultaneously been changed and a different sort of village is emerging. It would take us far beyond the scope of this present essay if a full analysis of the changing village were to be made, nevertheless in so far as these changes are more or less directly the consequences of modern land shortage, land tenure and economic conditions some account is essential. Since the age-village was fundamental in the life and social organization of these people, the new emerging village is of crucial importance.

Land shortage has definitely exaggerated the unity and exclusiveness of the village in the Lake Plains at a time when, for other reasons, it was beginning to become a more open group. There was always, as we have seen, insistence on the principle that only a member of the village could hold and use village land; but village boundaries were often poorly marked and it was difficult to determine which headman, if any, had genuine jurisdiction over land relatively distant from the established village sites. Nor was it particularly important to be able to do so whilst land was plentiful. As paddy cultivation spread, men began seeking extra fields further and further away from home as land nearby was all taken up; and so long as they did not attempt to take land in the immediate vicinity of another village site there was seldom much difficulty in this. The attitudes born of a sufficiency of land persisted and headmen were not disposed to protest against outsiders who sought fields near the limits of their vaguely defined areas. Internecine warfare and raiding had, of course, been abolished as an expression of and a weapon in inter-village rivalries and animosities. With the establishment of general peace and security, and with increasing movement about the country between villages and chiefdoms, such rivalries and animosities began to die away. Many men came to live in the villages which they themselves had not helped to found; their cowrals from their fathers' villages lived elsewhere, many of them widely scattered, and it was not possible to maintain a high degree of village patriotism, and, people began to feel, it was not especially necessary or important any longer.

It began to be possible for a man to hold some of his arable land within the area of another village, so long as members of the second village were not deprived of the opportunity of their own agricultural expansion should they desire it. This was especially the case where a large area of hitherto vacant (i.e. bush) but now valuable paddy land was contained within the approximate boundaries of a village. Outsiders were allowed to acquire fields on the strength of kinship with the headman or with one of the established villagers, or even by giving some small present to the headman (e.g. a little beer or some meat, etc.). Land was still plentiful then, or so it seemed to the Nyakyusa, and future shortages and difficulties were not perceived.